

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

NOTICE OF PROPOSED RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 4. DEPARTMENT OF AGRICULTURE PLANT SERVICES DIVISION

[R05-233]

PREAMBLE

- 1. Sections Affected**

R3-4-244	<u>Rulemaking Action</u>
R3-4-245	Amend
	Amend
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statutes: A.R.S. §§ 3-107(A)(1) and 3-201.01

Implementing statute: A.R.S. § 3-232(A)(2)(b)
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**

Notice of Rulemaking Docket Opening: 11 A.A.R. 1289, April 1, 2005
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

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Telephone:	(602) 542-0962
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- 5. An explanation of the rule, including the agency's reasons for initiating the rule:**

R3-4-244 and R3-245 are collectively known as the noxious weed rules. These rules regulated the movement, sale, and possession of noxious weeds in Arizona. R3-4-244 is an interior quarantine that deals with noxious weeds that are already present in Arizona and lists noxious weeds as "Regulated" or "Restricted". Regulated noxious weeds may be controlled to prevent further infestation or contamination. Restricted noxious weeds shall be quarantined to prevent further infestation or contamination. R3-4-245 is an exterior quarantine that prevents listed noxious weeds from entering the state of Arizona.

The proposed rulemaking would revise the definition for "habitat" and add *Pennisetum ciliare* (L.) Link – Buffelgrass, to the list of regulated noxious weeds in R3-4-244 and to the list of prohibited noxious weeds in R3-4-245. It would also add *Eichhornia crassipes* (Mart.) Solms – Floating waterhyacinth to the list of prohibited noxious weeds in R2-245. Buffelgrass is a drought-tolerant, warm-season, perennial forage grass that is grown throughout many arid and semi-arid regions in the world. It out-competes native shrubs and cacti for water and soil nutrients. Its most serious effect is to promote fires in native ecosystems that are not fire adapted. Buffelgrass provides fuel continuity where it never existed before. Populations of the plant are expanding in southern Arizona, and now form large, burnable stands in Organ Pipe National Monument, Saguaro National Park, Ironwood Forest and Sonoran Desert National Monuments. *Eichhornia crassipes* (Mart.) Solms – Floating waterhyacinth is an aquatic floating perennial with an extremely high growth rate and is difficult to control. Populations expand rapidly, forming dense mats that can pro-

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duce high quantities of dry matter. Floating mats clog waterways; alter water oxygen levels, temperature, and pH; provide mosquito habitat; and displace native aquatic vegetation and wildlife. If floating waterhyacinth would become established in the water transportation system of Arizona, it would have a large economic impact on Arizona Agriculture.

6. **A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on or not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

None

7. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

8. **The preliminary summary of the economic, small business, and consumer impact:**

With the adoption of the proposed rules the savings and benefits that accrue to the Arizona Department of Agriculture, the nursery, agriculture industries, municipal and county governments, public and private lands and the environment would be immeasurable.

It would be difficult to put a price tag on the cost of eradication, loss of agriculture, and natural resources, displacement of native plant species from infestations of these weeds around the state. There is a small trade in these noxious weed species within the nursery business in Arizona. The cost produced by the loss of this trade would be insignificant compared to the losses due to unwanted infestations.

The cost to state agencies, political subdivisions, the citizens of Arizona and the environment of not listing the proposed noxious weeds would far out way any benefit of using these noxious weed species for ornamental or forage crop purposes. The cost of controlling wild fires fueled by dried buffelgrass alone would out way any possible benefit. In the first few weeks of the fire season this year alone, there have been several buffelgrass wild fires in the Tucson area. Private and commercial structures could be threatened by these fires.

There would be very little impact on small business. Buffelgrass seed sales within Arizona are nonexistent by Arizona businesses and only one out of state businesses would be affected. The sale of floating water hyacinth is prohibited by R3-4-244. Any sales of floating waterhyacinth by Arizona business are illegal to begin with. The cost of controlling, and regulating, infestations of these weeds far out way any possible benefits of purposeful sale of the plants or seeds.

9. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

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10. **The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

An oral proceeding is not scheduled for these proposed rules. To request an oral proceeding or to submit comments, please contact the rules analyst listed in item #4 between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, except Arizona legal holidays. If a request for an oral proceeding is not made, the public record in this rulemaking will close at 5:00 p.m. on August 15, 2005.

11. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None

12. **Incorporations by reference and their location in the rules:**

None

13. The full text of the rules follows:

TITLE 3. AGRICULTURE

**CHAPTER 4. DEPARTMENT OF AGRICULTURE
PLANT SERVICES DIVISION**

ARTICLE 2. QUARANTINE

Section

R3-4-244. Regulated and Restricted Noxious Weeds

R3-4-245. Prohibited Noxious Weeds

ARTICLE 2. QUARANTINE

R3-4-244. Regulated and Restricted Noxious Weeds

A. Definitions. In addition to the definitions provided in A.R.S. § 3-201, the following terms apply to this Section:

1. "Habitat" means any ~~terrestrial or aquatic area within Arizona, such as canals, drainage ditches, ponds, and lakes that is capable of sustaining plant growth.~~
2. "Infested area" means each individual container in which a pest is found or the specific area that harbors a pest.
3. "Regulated pest" means any of the following plant species, including viable plant parts (stolons, rhizomes, cuttings and seed, except agricultural, vegetable and ornamental seed for planting purposes), found within the state may be controlled to prevent further infestation or contamination:

Cenchrus echinatus L. -- Southern sandbur,
Cenchrus incertus M.A. Curtis -- Field sandbur,
Convolvulus arvensis L. -- Field bindweed,
Eichhornia crassipes (Mart.) Solms -- Floating waterhyacinth,
Medicago polymorpha L. -- Burclover,
Pennisetum ciliare (L.) Link -- Buffelgrass
Portulaca oleracea L. -- Common purslane,
Tribulus terrestris L. -- Puncturevine.

4. "Restricted pest" means any of the following plant species, including viable plant parts (stolons, rhizomes, cuttings and seed, except agricultural, vegetable and ornamental seed for planting purposes), found within the state shall be quarantined to prevent further infestation or contamination:

Acroptilon repens (L.) DC. -- Russian knapweed,
Aegilops cylindrica Host. -- Jointed goatgrass,
Alhagi pseudalhagi (Bieb.) Desv. -- Camelthorn,
Cardaria draba (L.) Desv. -- Globed-podded hoary cress (Whitetop),
Centaurea diffusa L. -- Diffuse knapweed,
Centaurea maculosa L. -- Spotted knapweed,
Centaurea solstitialis L. -- Yellow starthistle (St. Barnaby's thistle),
Cuscuta spp. -- Dodder,
Eichhornia crassipes (Mart.) Solms -- Floating waterhyacinth,
Elytrigia repens (L.) Nevski -- Quackgrass,
Euryops sunbcarnosus subsp. *vulgaris* -- Sweet resinbush,
Halogeton glomeratus (M. Bieb.) C.A. Mey -- Halogeton,
Helianthus ciliaris DC. -- Texas blueweed,
Ipomoea triloba L. -- Three-lobed morning glory,
Linaria genistifolia var. *dalmatica* -- Dalmation toadflax,
Onopordum acanthium L. -- Scotch thistle.

B. Area under quarantine: All infested areas within the state.

C. The following commodities are hosts or carriers of the regulated or restricted pest:

1. All plants other than those categorized as a regulated or restricted pest;
2. Forage, straw, and feed grains;
3. Live and dead flower arrangements;
4. Ornamental displays;
5. Aquariums; and
6. Any appliance, construction or dredging equipment, boat, boat trailer or related equipment, or any other vehicle with

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soil attached or carrying plant debris.

- D. The Department may quarantine any commodity, habitat, or area infested or contaminated with a regulated pest and notify the owner or carrier of the restrictions and treatments listed in subsections (F) and (G). If the regulated pest is not quarantined, the Department shall provide the grower with technical information on effective weed control activities through integrated pest management.
- E. The Department shall quarantine any commodity, habitat, or area infested or contaminated with a restricted pest and shall notify the owner or carrier of the restrictions and treatments of the pest listed in subsections (F) and (G).
- F. Restrictions.
1. No regulated or restricted pest or commodity infested or contaminated with a regulated or restricted pest shall be moved to a non-infested area unless the Director issues a permit for the transporting or propagating of the pest.
 2. An owner or the owner's representative shall notify the Department at least two working days in advance of moving contaminated equipment from an infested area.
 3. The Department may inspect all equipment within two working days after a request to inspect the equipment is made if the equipment:
 - a. Has been moved into or through a non-infested area;
 - b. Has not been treated; or
 - c. Has been used to harvest an infested crop within the past 12 months.
- G. Treatments.
1. An owner or the owner's representative shall treat all soil and debris from equipment used in a quarantined area until it is free of the regulated or restricted pest before the equipment is moved. Removal or destruction of the restricted or regulated pest shall be accomplished through one of the following methods:
 - a. Autoclaving.
 - i. Dry heat. The commodity shall be heated for 15 minutes at 212° F.
 - ii. Steam heat. The commodity shall be heated for 15 minutes at 212° F;
 - b. Fumigating with ethylene oxide, chamber only: The commodity shall be fumigated with 1,500 mg/L for four hours in a chamber pre-heated to 115-125° F;
 - c. High-pressure water spray;
 - d. Crushing;
 - e. Incinerating; or
 - f. Burying in a sanitary landfill to a depth of six feet.
 2. An owner or the owner's representative shall treat an infested area or habitat, including the area within the crop, rangeland, roadside, or private property, with treatments based on an integrated pest management program appropriate to the commodity. The treatments shall take place under the direction of an inspector and shall include:
 - a. Reshipment from the state;
 - b. Manual removal;
 - c. Application of a herbicide;
 - d. Biological control including insects, fungi, nematodes, or microbes; or
 - e. Any other treatment approved by the Director.

R3-4-245. Prohibited Noxious Weeds

- A. Definition. In addition to the definitions provided in A.R.S. § 3-201, the following apply to this Section:
1. "Habitat" means any terrestrial or aquatic area within Arizona, ~~such as canals, drainage ditches, ponds, and lakes that~~ is capable of sustaining plant growth.
 2. "Infested area" means each individual container in which a pest is found, the specific area that harbors the pest, or any shipment that has not been released to the receiver and is infested with a pest.
 3. "Pest" means any of the following plant species, including viable plant parts (stolons, rhizomes, cuttings and seed, except agricultural, vegetable and ornamental seed for planting purposes), that are prohibited from entering the state:
 - Acroptilon repens* (L.) DC. -- Russian knapweed,
 - Aegilops cylindrica* Host. -- Jointed goatgrass,
 - Alhagi pseudalhagi* (Bieb.) Desv. -- Camelthorn,
 - Alternanthera philoxeroides* (Mart.) Griseb. -- Alligator weed,
 - Cardaria pubescens* (C.A. Mey) Jarmolenko -- Hairy whitetop,
 - Cardaria chalepensis* (L.) Hand-Muzz -- Lens podded hoary cress,
 - Cardaria draba* (L.) Desv. -- Globed-podded hoary cress (Whitetop),
 - Carduus acanthoides* L. -- Plumeless thistle,
 - Cenchrus echinatus* L. -- Southern sandbur,
 - Cenchrus incertus* M.A. Curtis -- Field sandbur,
 - Centaurea calcitrapa* L. -- Purple starthistle,
 - Centaurea iberica* Trev. ex Spreng. -- Iberian starthistle,

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Centaurea squarrosa Willd. -- Squarrose knapweed,
Centaurea sulphurea L. -- Sicilian starthistle,
Centaurea solstitialis L. -- Yellow starthistle (St. Barnaby's thistle),
Centaurea diffusa L. -- Diffuse knapweed,
Centaurea maculosa L. -- Spotted knapweed,
Chondrilla juncea L. -- Rush skeletonweed,
Cirsium arvense L. Scop. -- Canada thistle,
Convolvulus arvensis L. -- Field bindweed,
Coronopus squamatus (Forsk.) Ascherson -- Creeping wartcress (Coronopus),
Cucumis melo L. var. *Dudaim* Naudin -- Dudaim melon (Queen Anne's melon),
Cuscuta spp. -- Dodder,
Drymaria arenarioides H.B.K. -- Alfombrilla (Lightningweed),
Eichhornia azurea (SW) Kunth. -- Anchored waterhyacinth,
Eichhornia crassipes (Mart.) Solms -- Floating waterhyacinth,
Elytrigia repens (L.) Nevski -- Quackgrass,
Euphorbia esula L. -- Leafy spurge,
Halogeton glomeratus (M. Bieb.) C.A. Mey -- Halogeton,
Helianthus ciliaris DC. -- Texas blueweed,
Hydrilla verticillata Royale -- Hydrilla (Florida-elodea),
Ipomoea spp. -- Morning glory. All species except *Ipomoea carnea*, Mexican bush morning glory; *Ipomoea triloba*, three-lobed morning glory (which is considered a restricted pest); and *Ipomoea aborescens*, morning glory tree,
Ipomoea triloba L. -- Three-lobed morning glory,
Isatis tinctoria L. -- Dyers woad,
Linaria genistifolia var. *dalmatica* -- Dalmation toadflax,
Lythrum salicaria L. -- Purple loosestrife,
Medicago polymorpha L. -- Burclover,
Nassella trichotoma (Nees.) Hack. -- Serrated tussock,
Onopordum acanthium L. -- Scotch thistle,
Orobanche ramosa L. -- Branched broomrape,
Panicum repens L. -- Torpedo grass,
Peganum harmala L. -- African rue (Syrian rue),
Pennisetum ciliare (L.) Link -- Buffelgrass,
Portulaca oleracea L. -- Common purslane,
Rorippa austriaca (Crantz.) Bess. -- Austrian fieldcress,
Salvinia molesta -- Giant Salvinia,
Senecio jacobaea L. -- Tansy ragwort,
Solanum carolinense L. -- Carolina horsenettle,
Sonchus arvensis L. -- Perennial sowthistle,
Solanum viarum Dunal -- Tropical Soda Apple,
Stipa brachychaeta Godr. -- Puna grass,
Striga spp. -- Witchweed,
Trapa natans L. -- Water-chestnut,
Tribulus terrestris L. -- Puncturevine.

B. Area under quarantine: All states, districts, and territories of the United States except Arizona.

C. The following commodities are hosts or carriers of the pest:

1. All plants and plant parts other than those categorized as a pest;
2. Forage, straw, and feed grains;
3. Live or dead flower arrangements;
4. Ornamental displays;
5. Aquariums; and
6. Any appliance, construction or dredging equipment, boat, boat trailer or related equipment, or any other vehicle with soil attached or carrying plant debris.

D. The Department shall quarantine any commodity, habitat, or area infested or contaminated with a pest and shall notify the owner or carrier of the methods of removing or destroying the pest from the commodity, habitat, or area. The Department shall reject any shipment not released to the receiver and reship to the shipper.

E. Restrictions:

1. No pest or commodity infested or contaminated with a pest shall be admitted into the state unless the Director issues a permit for the transporting or propagating of the pest.

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2. The Department shall regulate the movement of the commodity out of a quarantined area within the state until the pest is eradicated. Any shipment or lot of a commodity infested or contaminated with a pest arriving in the state in violation of this quarantine shall, according to A.R.S. § 3-205(A), be immediately reshipped from the state, or treated or destroyed using one of the following methods:
 - a. The commodity shall be fumigated with 1,500 mg/L of ethylene oxide for four hours in a chamber pre-heated to 115-125° F;
 - b. Incinerating;
 - c. Burying in a sanitary landfill to a depth of six feet;
 - d. Application of a herbicide; or
 - e. Any other treatment approved by the Director.